IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8969 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AZIZ MOHMEDEHUSSEIN BHAEMALAND & 10 - Petitioner(s)
Versus
DISTRICT REGISTRAR & 3 - Respondent(s)

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Appearance :

MR JR NANAVATI for Petitioner(s) : 1 - 11.
MR AY KOGJE AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.
MR AK CLERK for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 29/11/2006

ORAL JUDGMENT

1. Mr.J.R. Nanavati, learned counsel for the petitioners and Mr.A.Y. Kogje, learned Assistant Government Pleader for

the respondents No.1 and 4 - State. None for the respondents No.2 and 3 though served.

2. By this petition, the petitioners seek to challenge the authority of the respondent No.3 to proceed with the inquiry as directed by the District Registrar, Cooperative Societies.

3. Short facts necessary for the disposal of the present matter are that the present petitioners are members of the respondent No.2 and at the time material, were in the Management Committee. The society owned and possessed a residential plot, over which 32 flats were to be constructed. On 9/8/1984 probably the petitioners and some others, passed resolution No.5 resolving that the 5th floor also be constructed to accommodate further eight members. It appears that without obtaining permission from the Municipal Corporation, Rajkot, the society made the construction. The Corporation issued a notice for demolition. The petitioners and the society filed Regular Civil Suit No.984 of 1986 before the learned Civil Judge challenging the correctness, validity and propriety of the said notice. It appears that before any interim order of injunction could be obtained by the petitioners and the society, the Municipal Corporation

demolished the said construction. When all these facts were brought to the notice of the District Registrar, Cooperative Societies, he directed that an inquiry be conducted under sec.93 into the act, conduct, breach of and non-observance of the duty by the Managing Committee including the present petitioners. One Mr.Umeshkumar J. Solanki, was appointed as an inquiry officer.

4. Being aggrieved by the said order passed by the District Registrar, the petitioners filed an appeal before the Cooperative Tribunal, the Tribunal remanded the matter back with a direction to proceed in accordance with law.

5. Mr.Umeshkumar Solanki – respondent No.3 took up the inquiry but before he could proceed further in the matter, the petitioners filed an application dtd.18/10/1991 before the District Registrar for change of the inquiry officer, submitting inter-alia that they had filed Regular Civil Suit No.845 of 1991 in the court of learned Civil Judge (S.D.), Rajkot against certain persons including Mr.Umeshkumar J.Solanki (the present inquiry officer) as party defendant. The District Registrar called for the explanation of Mr.Umeshkumar Solanki and ultimately rejected the application. Being aggrieved by

the appointment of the said inquiry officer and his final report, the petitioners are before this court.

6. Learned counsel for the petitioners submits that if Mr.Umeshkumar Solanki was a party defendant in the suit filed by the petitioners, then the possibility of prejudice and bias cannot be ruled out. His submission is that justice should not only be done but should appear to have been done and if there is any possibility of bias or prejudice, the said inquiry officer should have been immediately changed.

7. Mr.A.Y. Kogje, learned Assistant Government Pleader for the State on the other hand submits that the petitioners have not challenged the order passed by the District Registrar and as Mr.Umeshkumar Solanki was appointed as an inquiry officer much before filing of the suit, the present petitioners' application was rightly rejected by the District Registrar.

8. From the order dtd.1/12/1992 passed by Mr.Umeshkumar Solanki, it clearly appears the petitioners made an application for change of the inquiry officer to the District Registrar, who in his turn called for the explanation from Mr.Umeshkumar Solanki, inquiry officer and rejected the application. The District

Registrar who had rejected the application, himself is a party before this Court. He does not choose to file a reply nor did he produce copy of the order rejecting the petitioners' application. Under the circumstances, this Court is at a loss to understand as to why the application filed by the petitioners was rejected. So far as filing of the suit subsequent to appointment of Mr.Umeshkumar Solanki as an inquiry officer is concerned, the same would not provide any premium in favour of the respondents. Subsequent events certainly could persuade the petitioners to make an application to the District Registrar that as the parties are at daggers drawn and the petitioners have filed the suit against the inquiry officer, the possibility of bias could not be ruled out. It does not appear from the order passed by Mr.Umeshkumar Solanki nor it is the case of the District Registrar that any opportunity of hearing was given by the District Registrar to the present petitioners before disposal of their application for change of the inquiry officer. A substantive and important right of the petitioners could not be thwarted with by the Registrar without providing any opportunity of hearing.

9. Under the circumstances and for the reasons stated

aforesaid, I must hold that the petitioners have been condemned unheard and have been subjected to inquiry by the person who had some animus against the petitioners. Without making any comment on the final order dtd.1/12/1992 (Annexure-B) passed by the inquiry officer, I quash the same and direct the Registrar to change the inquiry officer.

10. The application filed by the petitioners is allowed. No costs.

(R.S. GARG, J.)

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